Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
The Effect of Foreign Mobile Termination	)	
Rates on U.S. Customers	)	IB Docket No. 04-398
	)	
	)	
	)	

COMMENTS OF
WESTERN WIRELESS INTERNATIONAL CORPORATION

Western Wireless International Corporation ("WWI") hereby files these comments in response to the Commission's Notice of Inquiry in the above-referenced proceeding.[1] WWI is a subsidiary of Western Wireless Corporation, one of the largest providers of rural wireless communications services in the United States. WWI, through various subsidiaries and operating entities, is licensed to provide mobile communications services to over 72 million people in eight countries, including Austria, Ireland, Slovenia, Bolivia, Ghana, and Haiti.[2] WWI's operating companies also provide other telecommunications services in some countries, including fixed-line services, wireless local loop and international long distance.

The vast majority of WWI's revenues (over 80%) comes from its European operations. In WWI's largest market, Austria, subsidiary tele.ring Telekom Services GmbH ("tele.ring") provides 1800 MHz GSM/GPRS mobile communications, UMTS ("3G") mobile

---

1 *Effect of Foreign Mobile Termination Rates on U.S. Customers*, IB Docket No. 04-398, Notice of Inquiry, FCC 04-247 (rel. Oct. 26, 2004) ("*NOI*").

2 WWI also holds a minority investment in a mobile services provider in the Republic of Georgia. WWI previously held a minority interest in a mobile services provider in Cote d'Ivoire. However, service was suspended after the assets of that operating entity were expropriated in 2003. WWI has filed a $55 million expropriation claim against the Ivoirian government.

communications, fixed-line and Internet services. In Ireland, Meteor Mobile Communications Limited ("Meteor") provides GSM/GPRS mobile communications services in the 900 and 1800 MHz bands. In Slovenia, Western Wireless International d.o.o. provides 1800 MHz GSM mobile communications services under the brand name "Vega." In each European market, WWI competes with two to five other mobile service providers, many of which are well-established companies. The Calling Party Pays ("CPP") system applies in all three of WWI's European markets.

WWI shares the view of many of the commenters in this proceeding that the Commission should not attempt to regulate foreign mobile termination rates at this time. For the reasons mentioned below, the national regulators operating in the countries where the mobile termination occurs are far better equipped than the Commission to determine whether the rates charged in those countries are too high.

I. FOREIGN REGULATORS HAVE THE SAME INCENTIVE AS THE COMMISSION TO INVESTIGATE AND ADDRESS HIGH MOBILE TERMINATION RATES

There is near unanimous agreement in the record that in CPP countries the rates charged by mobile operators to terminate calls on their networks do not vary based on whether the incoming call is foreign or domestic.[3] Thus, all callers to mobile phones in CPP countries (from outside as well as inside the country) must pay mobile termination fees.[4] Moreover, data from WWI's operations in Europe show that more than 97% of all traffic terminating on WWI's mobile networks originates in Europe. Thus, European carriers whose customers make calls to mobile phones have a strong incentive to ensure that the wholesale prices they pay for mobile

3 *See* NTT DoCoMo Reply Comments in IB Docket No. 02-324 at 7 (*citing* other pleadings that make this point).

4 *See* Letter from Marco De Benedetti, CEO, Telecom Italia Group, in IB Docket No. 02-324 (Mar. 3, 2004) at 3.

termination are set at efficient levels. Because of the pressures exerted by such carriers (and their customers who call mobile phones), regulators in the European Union are being forced to address the mobile termination rate issue.[5] The fact that strong incentives exist for foreign regulators and foreign carriers alike to seek lower mobile termination rates makes the situation respecting foreign mobile termination significantly different from the situation faced by the Commission when it decided to regulate international settlement rates. When the Commission addressed international settlement rates, there was no domestic equivalent to such rates, and as a result foreign regulators and foreign carriers had no incentive to ensure that such rates were reasonable.[6]

II. FCC REGULATION IS UNNECESSARY IN LIGHT OF ACTIVE EFFORTS BY FOREIGN REGULATORS TO LOWER MOBILE TERMINATION RATES

As noted in the *NOI*, a number of parties participating in the International Settlements Policy Reform ("ISP") proceeding urged the Commission not to attempt any regulation of foreign mobile termination rates, given the on-going activities by foreign regulators to address the issue in their respective countries.[7] WWI fully agrees with this position.

---

5 *See, e.g.*, T-Mobile Reply Comments in IB Docket No. 02-324 at 5-6; NTT DoCoMo Reply Comments at 7-8. The incentives at play in Europe also appear to be present in other parts of the world. *See, e.g.*, AHCIET Comments at 9 (noting that the national regulators in most Latin American countries are supervising the mobile service market, including mobile termination rates).

6 *See* Cable & Wireless Comments in IB Docket No. 02-324 at 18; NTT DoCoMo Reply Comments at 8.

7 *See NOI* at ¶¶ 6, 14 (citing Letter from Erkki Liikanen, European Commission, in IB Docket No. 02-324, (Mar. 4, 2004); Letter from Stephen Timms, UK Dept. of Trade and Industry (Mar. 3, 2004); Letter from Anette Bordes, KPN Mobile N.V. (Mar. 4, 2004); Letter from Cheryl Tritt, T-Mobile USA (Feb. 2, 2004); Letter from Diane Cornell, CTIA (Mar. 1, 2004); Letter from Marco De Benedetti, CEO, Telecom Italia Group (Mar. 3, 2004); Vodafone Comments at 9-11).

European Union regulators, in particular, are focused on the issue of lowering mobile termination rates. As European Commission Member Erkki Liikanen explained in his March 4, 2004 letter to Chairman Powell, the new European regulatory framework for electronic networks (the "Framework"), which became effective in July 2003, requires national regulators to consider whether the market for voice call termination on individual mobile networks is adequately competitive.[8] According to Commissioner Liikanen, the European Commission is committed to examining and, where necessary, correcting, the conclusion of the national regulatory bodies to ensure that appropriate regulation of termination rates is implemented where necessary. As evidence of its seriousness, the European Commission has already launched infringement proceedings against those Member States which did not adopt appropriate measures to implement the Framework within the established deadline.[9] The impact of the Framework (and follow-on proceedings by the national regulators) has already been felt. Average interconnection charges for call termination on the networks of European mobile operators have dropped by about 15%.[10]

Based on WWI's own observation of the regulatory changes taking place in its major foreign markets, WWI agrees with the assessment of the European Commission and others that FCC rules on mobile termination are not needed at this time. The on-going actions by the national regulators to correct any market failures in the call termination market will benefit all consumers, including those in the United States. Below, WWI discusses recent regulatory activity in its European markets:

---

[8] *See* Letter from Erkki Liikanen, European Commission to Chairman Powell (Mar. 4, 2004).

[9] *Id.* at 2.

[10] *Id.*

Austria. The Austrian regulator, the Telekom-Control Commission ("TKK"), was one of the first authorities to impose cost-based mobile termination rates, which it has applied to all operators.[11] Over the past few years, the TKK has required a gradual reduction in the termination rates of Austria's largest wireless carriers.[12] Moreover, WWI's Austrian operating entity – with only the fourth largest market share in the country – last year voluntarily reduced its termination fees by over 18%. The TKK has explained its view that "a uniform market price should develop [in] the long term given identical networks and comparable competitive positions," although it recognizes that, in the shorter term, different rates between carriers may be justified in part due to the varying times of initial market entry.[13]

Austria implemented the new Framework by adopting the Telecommunications Market Ordinance which entered into force on October 17, 2003. In May 2004, consistent with its obligations under the Framework and the new ordinance, the TKK announced its findings that all mobile operators are considered to have significant market power ("SMP") with respect to call terminations on their individual networks.[14] Pursuant to the consultation requirement of Article 7 of the Framework, the TKK notified the European Commission in September 2004 of its proposal to regulate the call termination market (concurrent with its national consultative

---

[11] *See* OFTEL, "The use of LRIC as a costing methodology in regulation" at 3 (Feb. 12, 2002), available at: www.ofcom.org.uk/static/archive/oftel/publications/mobile/ctm_2002/lric120202.pdf. The rates previously established by the TKK expired in 2004 and new rates were established by negotiation among the operators, which the TKK then reviewed.

[12] *See* Telekom-Control Commission Press Release, "Telekom-Control Commission announces mobile interconnection decisions" (April 15, 2004) ("*TKK Press Release*") at attached Table, available at http://www.rtr.at/web.nsf.

[13] *See TKK Press Release.*

[14] *See* "Austria: TKK identifies SMP operators for mobile call termination and leased line markets" (May 12, 2004), available at http://t-regs.com. Annex B to the *NOI* failed to take note of this development.

process), and the Commission responded with comments on October 7, 2004.[15] It is clear, therefore, that the Austrian regulator is fully engaged on the issue of mobile termination rates and that no Commission regulation is needed.

Ireland. As in Austria, the Irish regulator, the Commission for Communications Regulation ("ComReg"), is actively involved in developing an appropriate regulatory response to mobile termination rates. In its June 8, 2004 notification to the European Commission, ComReg indicated its findings that all four mobile operators in Ireland should be designated as possessing SMP with regard to the termination of voice calls on their respective networks.[16] In a concurrently released "Consultation on Remedies," ComReg determined that all designated SMP operators "shall have an obligation to offer cost-oriented prices for Mobile Voice Call Termination."[17] ComReg explained that it has the right "to issue Directions which impose a price control, glide path or a price cap on the SMP MNOs, after consultation, once the results of various models and benchmarking exercises are known."[18] Based on this activity, it is evident that ComReg is sufficiently committed to ensuring fair, cost-based termination rates for all of its mobile operators.

Slovenia. Slovenia acceded to the European Union in 2004. Slovenia enacted the Electronic Communications Act, effective May 1, 2004, to adopt the new 2003 European Framework. Unlike long-time EU members Austria and Ireland, however, the Slovenian

---

15 *See* Letter from Mario Monti, European Commission Member (Oct. 7, 2004), document SG-Greffe (2004) D/204425, Case AT/2004/0099.

16 *See* Commission for Communications Regulation, "Response to Consultation and Notification to European Commission – Wholesale voice call termination on individual mobile networks," Doc. No. 04/62a (June 8, 2004) at 55.

17 Commission for Communications Regulation, "Consultation on Remedies – Wholesale voice call termination on individual mobile networks," Doc. No. 04/62b (June 8, 2004) at 47.

18 *Id.* at 48.

regulator, ATRP, has not yet taken action to lower fixed-to-mobile termination fees. The ATRP, established in 2001, got off to a slow start in reforming the country's telecom market.[19] More recently, however, it has begun to implement significant changes in the wireline sector. In August 2003, relying on a simple benchmark method, ATRP reduced wireline termination charges down to the EU average.[20] As noted in a 2004 white paper produced by the faculty of economics at the University of Ljubljana, the ATRP still has ahead of it the complex work of analyzing the cost structure of the incumbent fixed operator – an activity which will probably be carried out in 2005 – to determine the appropriate cost-based termination charges for the future.[21] In the wireless realm, the ATRP has assigned the status of SMP to Slovenia's two largest wireless operators, Mobitel and Si.mobil, and in late 2003 it did address the issue of high mobile-to-mobile interconnection rates, although WWI disagreed with the asymmetric pricing model it employed.[22]

Although the pace of the ATRP's actions has been slower than that of many other European Union regulators, WWI does not believe that the implementation of Commission rules regulating foreign mobile termination would be the best way to spur progress by the ATRP at this time. While several aspects of the regulatory landscape in Slovenia need to be improved – with mobile termination rates being only one of them – WWI still has at its disposal administrative and judicial options within the country (and, if necessary, within the EU) which WWI is currently pursuing to promote reform. FCC regulation should be avoided, at the very

---

[19] *See* N. Hrovatin *et al.*, *Liberalisation and (De)Regulation of Slovenian Telecommunications Markets* (2004) ("*Ljubljana White Paper"*) at 1-2 and 11 ("ATRP has been preoccupied with its formation and lack of information, time and experienced staff").

[20] *See id.* at 11.

[21] *See id.* at 14.

[22] *See Ljubljana White Paper* at 6, 13.

least until all the domestic avenues have been exhausted. WWI expects that Slovenia's mobile termination rates will ultimately fall to efficient levels in the future. If the Commission is nevertheless concerned with the pace of reform in Slovenia, it may want to engage in informal bilateral consultations with the ATRP to lend it any relevant expertise that may be helpful.

III. DEVELOPING A COST MODEL FOR FOREIGN MOBILE TERMINATION WOULD BE EXTREMELY COMPLEX AND DIFFICULT

There is no administratively efficient way for the Commission to develop a cost model that adequately takes into account all of the complexities associated with mobile termination outside of the United States. No regulator in the world has ever attempted to develop a cost model that captures all of the salient aspects of mobile termination outside of the immediate country. Thus, the Commission would be operating in unchartered territory to the extent that it attempted to construct such a model. In the *NOI*, the Commission mentions that "the United Kingdom, South Korea and Sweden . . . have conducted cost studies of mobile termination rates charged by mobile operators in their own countries,"[23] but such studies, which were themselves complex, could not even begin to capture all of the complexities of an internationally-focused study.[24]

Even when national regulators have attempted merely to determine the cost of mobile termination in their own countries the difficulties associated with such an exercise have been significant. For example, a recent analysis of the United Kingdom's approach indicates that "the setting of the optimal [fixed-to-mobile] termination charges is quite complex. It requires a regulator to have a significant amount of information on the characteristics of demand and to

---

[23] *NOI* at ¶ 29.

[24] *Id*. at ¶ 37(noting practical problems, such as the lack of necessary data, that could make a LRIC-based cost study impractical).

make assumptions about the competitive dynamics of the mobile markets."[25] The United Kingdom's process took several years to complete, involved multiple government agencies and was actively challenged in court.[26]

Because the characteristics of each national mobile market will be different, any cost model that does not adequately take into account the salient variations in such markets would be arbitrary and capricious.[27] By the same token, the Commission would have little or no practical way to generate all of the information it would need to account for the differences in the absence of direct regulatory authority over the relevant foreign mobile carriers. Foreign national regulators are, by contrast, in a much better position to gather the information needed to address high mobile termination rates outside of the United States.

In the *NOI*, the Commission sought comment on the possible use of benchmarking as a way to set foreign mobile termination rates. Benchmarking, however, is inherently imprecise. Moreover, WWI agrees with Verizon that "there are many differences among countries that benchmarking cannot take into account, including differences in teledensity, in peak/off-peak ratios, in call duration, in usage volumes and in input prices."[28]

---

25 G. Houpis and T.M. Valletti, "Mobile termination: what is the 'right' charge?" (March 2004) at 1.

26 *Id*. at 1-4; O. Bomsel, M. Cave, G. Le Blanc, K. Neumann, "How Mobile Termination Charges Shape the Dynamics of the Telecom Sector" (July 2003) at 36.

27 *See Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (an agency's decision is arbitrary and capricious if it "entirely failed to consider an important aspect of the problem"); *see also Atlantic Tele-Network, Inc. v FCC*, 59 F.3d 1384, 1389 (D.C. Cir. 1995) (court's "duty is to ensure that the Commission has examined the relevant data . . ."); *David Ortiz Radio Corp. v. FCC*, 822 F.2d 104, 111 (D.C.Cir. 1987) ("As the FCC evaded the requisite determination by ignoring important arguments and evidence, its decision in this regard is arbitrary and capricious and must be remanded.").

28 *NOI* at ¶ 34 (describing some concerns raised about benchmarking in the Charles River Report submitted by Verizon in IB Docket No. 02-324). Moreover, WWI would strongly caution against comparing mobile termination prices in the United States, where Receiving Party

Finally, any attempt to regulate the rates charged for network interconnection between carriers operating wholly outside of the United States would undoubtedly isolate the Commission from its sister regulators around the world and provoke legal challenges based on the lack of statutory authority.

CONCLUSION

Based on the foregoing, WWI urges the Commission not to regulate the rates charged for foreign mobile termination. Many foreign regulators, especially those in the European Union, have the legal authority and incentive to address high mobile termination rates in their home markets, and have already done so or are in the process of doing so. Any attempt by the Commission to regulate such rates would be extremely difficult in the absence of direct regulatory authority over the relevant mobile operators, and would be fraught with legal and administrative problems. It would make more sense for the Commission to allow the relevant foreign regulators time to address the issue in their home markets.

Respectfully Submitted,

Andrew Kelly
Director of Public Policy
WESTERN WIRELESS
INTERNATIONAL CORPORATION
+353-85-7117711

Mark Rubin
Director of Federal Government Affairs
WESTERN WIRELESS CORPORATION
401 Ninth Street, N.W., Suite 550
Washington, D.C. 20004
(202) 654-5903

Ari Q. Fitzgerald
Hogan & Hartson L.L.P.
555 13th Street, NW
Washington DC 20004
(202) 637-5423

Their Counsel

January 14, 2005

Pays ("RPP") is used, with those in the European Union, where CPP is used. CPP markets necessarily exhibit different demand conditions and therefore different pricing patterns than do either RPP mobile markets or fixed services markets. One cannot look at call termination rates in isolation without taking into account the overall market structure.